Supreme Court, U.S.
FILED
OCT 6 1999
OFFICE OF THE CLERK

(2)

No. 99-319

In the

Supreme Court of the United States

MINGTAI FIRE & MARINE INSURANCE CO., LTD.,

Petitioner,

vs.

UNITED PARCEL SERVICE, INC. and
UNITED PARCEL SERVICE INTERNATIONAL, INC.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S SUPPLEMENTAL BRIEF

MICHAEL W. LODWICK
Counsel of Record
PORTER, GROFF & LODWICK
A LAW CORPORATION
110 Pine Avenue, 11th Floor
Long Beach, California 90802-4430
(562) 495-1200

Attorneys for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

688

TABLE OF CONTENTS

Page

SUPPLEMENTAL BRIEF

In September 1999, the U.S. opposed a proposal to make Taiwan a member of the United Nations, citing a 27-year-long commitment to the one-China policy created by President Nixon 1

TABLE OF CITED AUTHORITIES

Page

Reported Case

Mingtai Fire & Marine Ins. Co. v. United Parcel Service, 177 F.3d 1142 (9th Cir. 1999) 3

Rule

S. Ct. R. 15.8 1

Executive-Branch Documents

Remarks by the President and President Jiang Zemin of the People's Republic of China in Photo Opportunity, Governor's General Residence, Auckland, New Zealand (Sept. 11, 1999), 1999 WL 705534 (White House) (Sept. 12, 1999) 1

"U.S. Position on Taiwan," enclosed in a letter from James G. Hergen, U.S. Dep't of State, to petitioner's counsel, Oct. 1, 1999 ..... 3, 4

Secondary Source

"U.S. speaks against putting Taiwan on U.N. agenda," CNN.com.asianow, Sept. 16, 1999 (visited Sept. 24, 1999) <http://cnn.com/ASIANOW/east/9909/15/bc/taiwan.china.un.reut/index.html> 2

PETITIONER'S SUPPLEMENTAL BRIEF

As permitted by S. Ct. R. 15.8, petitioner Mingtai Fire & Marine Insurance Co., Ltd. files this supplemental brief to call attention to intervening matter not available at the time it filed its petition for writ of certiorari on August 23, 1999. This intervening matter consists of two official foreign-policy statements – one by President Clinton, the other by the U.S. Mission to the United Nations – which demonstrate that the court of appeals erred when it held that China's accession to the Warsaw Convention was not effective for Taiwan because the U.S. treats Taiwan as independent of China.

In September 1999, the U.S. opposed a proposal to make Taiwan a member of the United Nations, citing a 27-year-long commitment to the one-China policy created by President Nixon.

On September 11, 1999, a reporter in Auckland, New Zealand asked President Clinton – who was attending the Asia Pacific Economic Cooperation summit – "Mr. President, what's your message when it comes to Taiwan?"[1] President Clinton replied:

---

[1] Remarks by the President and President Jiang Zemin of the People's Republic of China in Photo Opportunity, Governor's General Residence, Auckland, New Zealand (Sept. 11, 1999), 1999 WL705534 (White House) (Sept. 12, 1999).

> My message is that our policy has not and will not change. We favor one China. We favor a peaceful approach to working out the differences. We favor the cross-strait dialogue. Our policy has not changed and it will not change.[2]

Four days later, the U.S. formally opposed a move to bring to the floor of the U.N. General Assembly a resolution that would recognize Taiwan as an independent state and grant it membership of the United Nations. In a statement made by Robert Rosenstock of the U.S. Mission to the U.N., the U.S. – breaking years of silence on the issue of Taiwan membership – opposed treating Taiwan as independent of China.[3] "Asked why the United States decided this year to speak out against placing the Taiwan item on the agenda, a U.S. official said: 'We wanted to make clear that our "one-China" policy is unchanged.' "[4]

Here is the text of the U.S. position as stated at the U.N. on September 15, 1999:

U.S. Position on Taiwan

> The policy of the United States toward China has been consistent and clear over the course of the last twenty-seven years, and the terms of six U.S. Presidents. This long-standing policy is set forth in the three communiques that

---

[2] *Id.*

[3] "U.S. speaks against putting Taiwan on U.N. agenda," CNN.com.asianow, Sept. 16, 1999 (visited Sept. 24, 1999) <http://cnn.com/ASIANOW/east/9909/15/bc/taiwan.china.un.reut/index.html>.

[4] *Id.*

> we have jointly issued with the People's Republic of China: the Shanghai Communiqué of 1972; the Nationalization Communiqué of December 15, 1978; and the Sino-U.S. Communiqué of August 17, 1982; as well as the Taiwan Relations Act. President Clinton's Administration, like every Administration since President Nixon, has repeatedly reaffirmed this policy both publicly and privately, at the highest levels.
>
> Most recently, on September 10, Secretary Albright stated once again that there are three pillars of our position on China: we have a "one China" policy; cross-Strait problems should be resolved peacefully; and this should be done through dialogue.[5]

This statement of the "U.S. Position on Taiwan" contradicts the argument made in this case by the United States as amicus curiae. In the court of appeals, the amicus argued that the court must treat Taiwan as independent of China, insisting "[t]he United States has not recognized in the PRC a power to bind Taiwan."[6] In its opinion, the court explained it was following the representations made in the amicus brief and at oral argument in refusing to enforce the Warsaw Convention.[7] But

---

[5] "U.S. Position on Taiwan," enclosed in a letter from James G. Hergen, U.S. Dep't of State, to petitioner's counsel, Oct. 1, 1999. Mr. Hergen is the Department of State's Assistant Legal Adviser for East Asian and Pacific Affairs, and appeared as counsel on the Brief for the United States as Amicus Curiae, Docket No. 98-15088 (9th Cir. 1998) (hereinafter "Amicus Brief").

[6] Amicus Brief at 1.

[7] *Mingtai Fire & Marine Ins. Co. v. United Parcel Service*, 177 F.3d 1142, 1146 (9th Cir. 1999) (Pet. App. 8-9).

during the pendency of this petition, the U.S. has demonstrated that it does not recognize Taiwan's independence of China by opposing the proposal to make Taiwan a U.N. member. The position urged in the amicus brief and adopted by the court of appeals cannot be reconciled with the official statement of the "U.S. Position on Taiwan" made at the U.N. just three weeks ago.

Advising that the U.S. has maintained its one-China policy "over the course of the last twenty-seven years, and the terms of six U.S. Presidents,"[8] the U.S. statement at the U.N. supports Mingtai's observation that this country's one-China policy dates from President Nixon's joint promulgation of the Shanghai Communiqué in 1972.[9]

In the light of the "U.S. Position on Taiwan," the court of appeals' decision, adopting the amicus argument for an independent Taiwan, should not stand. The court's invalidation of China's accession to the Warsaw Convention for Taiwan should be reversed because it conflicts directly with the one-China policy that has been the U.S. policy for 27 years – a policy most notably applied on September 15, 1999 to oppose Taiwan's latest bid for U.N. membership.

Dated: October 6, 1999.

Respectfully submitted,

MICHAEL W. LODWICK
OF PORTER, GROFF & LODWICK
Counsel of Record for Petitioner

---

[8] "U.S. Position on Taiwan," *supra* note 5.

[9] Mingtai's Petition for Writ of Certiorari at 20.